

ORIGINAL

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8 *Attorneys for Plaintiffs*

**FILED**  
DISTRICT COURT OF GUAM

NOV 29 2005

MARY L.M. MORAN  
CLERK OF COURT

9  
10 **IN THE UNITED STATES DISTRICT COURT OF GUAM**  
11 **TERRITORY OF GUAM**

12 **CESS NAVARRO OLMO and**  
13 **RONNIE FERRERAS,**

14 Plaintiffs,

15 v.

16 **A. P. GREEN INDUSTRIES, INC., et al.,**

17 Defendants.

Civil Case 05-00025

ORIGINAL

**LOCAL RULE 16.2(b) NOTICE OF  
DISAGREEMENT ON SCHEDULING  
PLAN**

18 Pursuant to Local Rule 16.2(b) of the District Court of Guam, Counsel for the parties have  
19 been unable to agree on a proposed Scheduling Plan. A plan proposed by Counsel for the  
20 Plaintiff was circulated to all local defense counsel November 25, 2005, and a meeting of  
21 Plaintiffs' Counsel and some but not all of the local counsel was held November 28, 2005. One  
22 local defense counsel was unable to attend because of her need to consult with off-island counsel  
23 and another local defense counsel submitted comments by email and participated by telephone in  
24 the meeting of November 28, 2005.

25 Efforts to have a preliminary discussion and a draft Scheduling Order in circulation at an  
26 earlier date were complicated by the fact that the initial lead Counsel for the Plaintiffs, John C.  
27 Unpingco, left the firm November 10, 2005, to open his own office and that his replacement lead  
28

1 counsel, Ignacio C. Aguigui, has been engaged on a daily basis in a complex civil trial in the  
2 District Court of the Northern Mariana Islands since October 21, 2005 and that is still on-going.

3 At the meeting of November 28, 2005, the local defense counsel in attendance and the  
4 attorney who submitted his suggestions by email and participated by phone requested that all  
5 dates contained in the proposed Scheduling Order be pushed back four to six months.  
6

7 Counsel for the Plaintiffs has revised the proposed dates in an effort to accommodate  
8 defense counsel and is recirculating the proposed Scheduling Order to all local defense counsel.  
9 Counsel for the Plaintiffs and the Defendants seem generally in agreement that with the dates  
10 appropriately revised, a mutually acceptable Scheduling Order might be agreed upon on or before  
11 the scheduling hearing set for December 13, 2005.

12 The additional time that may be necessary to bring this case to trial is influenced by a  
13 variety of factors, including that the District Court is serviced by visiting Judges in the absence of  
14 an incumbent District Judge; the number of off island counsel involved; the number of  
15 Defendants; and the logistics inherent in the coordinating of the schedules of so many persons.  
16

17 Attached hereto is a copy of the Plaintiffs' revised Proposed Scheduling Order and  
18 Discovery Plan and a separate draft Discovery Plan. Alternate Scheduling Proposals have not  
19 been received from defense counsel, but Counsel for the Plaintiffs do not infer from this that they  
20 have waived their objections to Plaintiffs' drafts.  
21

22 Respectfully submitted this 29<sup>th</sup> day of November, 2005.

23 **LUJAN, AGUIGUI & PEREZ LLP**

24  
25 By: 

26 **IGNACIO C. AGUIGUI, ESQ.**  
27  
28

1 Approved as to form and content:

2 **ARRIOLA COWAN & ARRIOLA**

3  
4 By: \_\_\_\_\_  
5 **ANITA P. ARRIOLA, ESQ.**

6 **BLAIR STERLING & JOHNSON**

7  
8 By: \_\_\_\_\_  
9 **THOMAS C. STERLING, ESQ.**

10 **CARLSMITH BALL LLP**

11 By: \_\_\_\_\_  
12 **J. PATRICK MASON, ESQ.**

13 **MAHER · YANZA · FLYNN · TIMBLIN LLP**

14  
15 By: \_\_\_\_\_  
16 **LOUIE J. YANZA, ESQ.**

17 **DOOLEY ROBERTS & FOWLER LLP**

18  
19 By: \_\_\_\_\_  
20 **JON A. VISOSKY**

21 **Declaration of Service**

22 I certify that the foregoing pleading, entitled **LOCAL RULE 16.2(b) NOTICE OF**  
23 **DISAGREEMENT ON SCHEDULING PLAN**, was served November 29, 2005, upon the  
24 following:

25 **ANITA P. ARRIOLA, ESQ.**  
26 **ARRIOLA COWAN & ARRIOLA**  
27 259 Martyr Street, Suite 201  
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Attorneys for Owens-Illinois, Inc.

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6 401 Bank of Hawaii Building  
7 134 West Soledad Avenue  
8 Hagåtña, Guam 96910  
9 Attorneys for Georgia-Pacific Corporation, A. W. Chesterton  
10 Company, and Kaiser Gypsum Company, Inc.

11 **LOUIE J. YANZA, ESQ.**

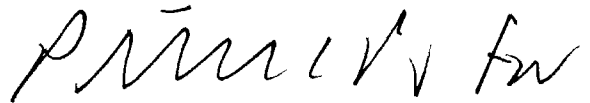
12 **MAHER • YANZA • FLYNN • TIMBLIN LLP**

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17 **DOOLEY ROBERTS & FOWLER LLP**

18 201 Orlean Pacific Plaza  
19 865 South Marine Corps Drive  
20 Tamuning, Guam 96913  
21 Attorneys for Garlock, Inc., Viacom, Inc., Foster Wheeler  
22 Corporation, Bayer CropScience, Inc., and  
23 The Dow Chemical Company

24  
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26  
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IGNACIO C. AGUIGUI, ESQ.

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8 *Attorneys for Plaintiffs*

**DRAFT**

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10 **IN THE UNITED STATES DISTRICT COURT OF GUAM**  
**TERRITORY OF GUAM**

11 **CESS NAVARRO OLMO and**  
12 **RONNIE FERRERAS,**

13 Plaintiffs,

14 v.

15 **A. P. GREEN INDUSTRIES, INC., et al.,**

16 Defendants.

Civil Case **05-00025**

**[PROPOSED] SCHEDULING ORDER AND  
DISCOVERY PLAN**

17 Pursuant to Rule 16 and 26(f) of the Federal Rules of Civil Procedure and Local Rule 16.1  
18 for the District Court of Guam, the parties hereby submit the following proposed Scheduling  
19 Order:

20 1. **Nature of the Case:** The Plaintiffs allege: They were employed by the United  
21 States Navy approximately between the years 1966 to 1992. During their employment the  
22 Plaintiffs worked aboard Navy vessels transiting between the Philippines and Guam and in Navy  
23 shipyards in Hawaii and the Philippines. During their employment the Plaintiffs were regularly  
24 and closely exposed to asbestos and asbestos-containing products that the Defendants  
25 manufactured, sold and distributed for use on the vessels and in the shipyards where the Plaintiffs  
26 were employed. As a result of their exposure to these ultra hazardous products, the Plaintiffs  
27 unknowingly inhaled asbestos dust and asbestos fiber, as a result of which they each contracted  
28

1 malignant mesothelioma, cancer, and/or other asbestos-related diseases, which illnesses were not  
2 diagnosed until about 2005. This is a products liability action alleging damages on the basis of  
3 (a) negligence; (b) strict liability; (c) warranty of merchantability; (d) market-share liability; (e)  
4 enterprise liability; (f) unfitness for intended use; and (g) negligent misrepresentation. The  
5 Plaintiffs also seek punitive damages.

6           **2. The posture of the case is as follows:**

7           **(a) The following motions are on file:** Certain of the Defendants have filed  
8 Motions to Dismiss for Lack of Personal Jurisdiction and for Improper Venue. No time or date  
9 has been set for the motions. Certain of the Defendants have filed a Notice of Tag-Along Action.  
10 The Plaintiffs have filed a Preliminary Opposition to Transfer of Case as Tag-Along Action.  
11 Counsel for Defendants Garlock, Inc., Viacom, Inc., Foster Wheeler Corporation, Bayer  
12 CropScience, Inc., and The Dow Chemical Company, and John Crane, Inc., have stated that they  
13 desire to have the case transferred to the MDL court, the Eastern District of Pennsylvania in  
14 Philadelphia; the Plaintiffs oppose such transfer because of the oppression or vexation that such a  
15 move would impose on the Plaintiffs, two elderly, frail and fatally ill men who are citizens of and  
16 reside in the Philippines. The distance from Manila to Philadelphia is 8,585 miles, whereas the  
17 distance from Manila to Hagåtña, Guam, is 1,596. Given their health condition, it would be an  
18 intolerable burden on the Plaintiffs to be required to travel more than five times the distance to  
19 Guam to have their case heard in Philadelphia. Another adverse factor would be the difference in  
20 weather that they would likely experience if the case were moved to Philadelphia. Whereas  
21 Guam and Manila enjoy virtually identical climatic conditions, the East Coast of the United States  
22 is markedly different than the Philippines and Guam and such a change could also adversely  
23 affect the Plaintiffs' health. The Plaintiffs would also incur the additional hardship of the expense  
24 of a trip of such a distance. Philadelphia would be truly a *forum non conveniens* for the Plaintiffs.

25           **(b) The following motions have been resolved:** None of the motions to dismiss  
26 have been resolved, as no date or time has been set for the motions. The parties request that the  
27 Court set a hearing date and time for the motions.  
28

1 (c) **The following discovery has been initiated:** No party has initiated discovery  
2 at this time.

3 (d) **Status of pleadings:** Because of the several pending motions and the filing of  
4 cross-claims to which answers have not yet been filed, the pleadings have not closed.

5 3. **Motions to Add Parties or Claims:** All motions to add parties and claims shall  
6 be filed on or before **July 17, 2006**.

7 4. **Motions to Amend Pleadings:** All motions to amend pleadings shall be filed on  
8 or before **July 17, 2006**.

9 5. **Status of Discovery:**

10 (a) The times for disclosures under Rule 26(a) and 26(e) of the Federal Rules of  
11 Civil Procedure are modified as follows:

12 (1) The "initial disclosures" described in subsections (A), (B), (C), and  
13 (D) of Fed. R. Civ. P. 26(a)(1) shall be made on or before **Monday**  
14 **April 3, 2006**.

15 (2) Initial Fed. R. Civ. P. 26(a)(2) disclosures of expert witnesses shall  
16 be made on or before **Monday, June 5, 2006**. Rebuttal disclosures  
17 shall be made on or before **Monday, July 1-, 2006**.

18 (3) The "pretrial disclosures" described in Fed. R. Civ. P. 26(a)(3)(A),  
19 (B) and (C) shall be made at least thirty (30) days before the trial  
20 date or by **Tuesday, June 6, 2007**.

21 (b) The following is a description of all pretrial discovery each party intends to  
22 initiate prior to the close of discovery:

23 Plaintiffs: Interrogatories, Requests to Produce, Admissions and Depositions;

24 Defendants: Interrogatories, Requests to Produce, Admissions and Depositions.

25 6. The parties shall appear before the District Court on **December 13, 2005, at 11**  
26 **a.m.** for the Scheduling Conference.

1           7.     **Discovery Cut-Off Date:** The discovery cut-off date (defined as the last day to  
2 file responses to discovery) is **Tuesday, January 2, 2007**.

3           8.     **Discovery Motions Cut-Off Date:** All discovery motions shall be filed on or  
4 before **Monday, February 5, 2006**, and heard on or before **Monday, March 19, 2006**.

5           9.     **Dispositive Motions.** All dispositive motions shall be filed on or before **Monday,**  
6 **April 9, 2007**, and heard on or before **Monday, May 28, 2007**.

7           10.    **Settlement Prospects:** Settlement prospects are unknown at this time.

8           11.    **Preliminary Pre-Trial Conference:** The Preliminary Pre-Trial Conference shall  
9 be held on **June 18, 2007**, at \_\_\_\_\_. **m.** (no later than twenty-one (21) days prior to trial).

10          12.    **Filing of Trial Documents:** The parties' pretrial materials, discovery materials,  
11 witness lists, designations and exhibit lists as required by LR 16.7(d) shall be filed on or before  
12 **June 25, 2007**. The deadlines for filing all other pretrial materials shall follow the deadlines  
13 established under the local rules.

14          13.    **Pre-Trial Order:** The proposed Pre-Trial Order shall be filed on or before **June**  
15 **25, 2007** (no later than fourteen (14) days prior to trial).

16          14.    **Final Pre-Trial Conference:** The Final Pre-Trial Conference shall be held on  
17 **Monday, July 2, 2007**, at \_\_\_\_\_. **m.** (seven (7) days prior to trial).

18          15.    **Trial Date:** The trial shall be held on **Monday, July 9, 2007**, at \_\_\_\_\_. **m.**

19          16.    **Jury:** Plaintiffs have demanded trial by jury.

20          17.    **Length of Trial:** It is presently anticipated that the trial will take 3-5 weeks.

21          18.    The names of counsel are as follows:

22  
23                   For Plaintiff:           **DAVID J. LUJAN, ESQ.**  
24   **IGNACIO C. AGUIGUI, ESQ.**  
25   **PETER C. PEREZ, ESQ.**  
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5 For Defendants:

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Chesterton Company, and Kaiser Gypsum Company, Inc.

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Tamuning, Guam 96913  
24 Attorneys for Garlock, Inc., Viacom, Inc., Foster Wheeler  
Corporation, Bayer CropScience, Inc., and The Dow  
25 Chemical Company

26 19. The parties do not wish to submit this case to a settlement conference.  
27  
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1 **MAHER · YANZA · FLYNN · TIMBLIN LLP**

2  
3 By: \_\_\_\_\_  
4 **LOUIE J. YANZA, ESQ.**

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8 *Attorneys for Plaintiffs*

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13 Plaintiffs,

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15 **A. P. GREEN INDUSTRIES, INC., et al.,**

16 Defendants.

Civil Case 05-00025

**DISCOVERY PLAN**

17 Pursuant to FRCP 26(f) and LR 16.1, the parties submit the following proposed discovery  
18 plan. Whenever any dates falls on a day on which the District Court is not opened, the task shall  
19 be completed the following business day.

20 1. **Status of Discovery:**

21 (a) The times for disclosures under Rule 26(a) and 26(e) of the Federal Rules of  
22 Civil Procedure are modified as follows:

23 (1) The “initial disclosures” described in subsections (A), (B), (C), and  
24 (D) of the FRCivP Rule 26(a)(1) shall be exchanged by **Monday,**  
25 **April 3, 2006** [Pursuant to local rules, these are not to be filed].

26 (2) The disclosure of expert testimony by plaintiff’s experts shall be  
27 made not later than **Monday, June 5, 2006.** The disclosure of  
28

expert testimony by defendants' experts shall be made by **Monday, July 10, 2006.**

(3) The “pretrial disclosures” described in FRCivP Rule 26()(3)(A), (B) and (C) shall be made at least thirty (30) days before the trial date or by **Tuesday, June 6, 2007**.

(b) The following is a description and schedule of all pretrial discovery each party intends to initiate prior to the close of discovery;

Plaintiff: Interrogatories, Requests to Produce, Admissions and Depositions;

Defendants: Interrogatories, Requests to Produce, Admissions and Depositions;

2. **Discovery Cut-Off Date:** The discovery cut-off date (defined as the last day to file responses to discovery) is **Tuesday, January 2, 2007**.

3. **Discovery Motions Cut-Off Date:** The anticipated discovery motions are Motions to Compel or Motions for Protective Orders. All discovery motions shall be filed on or before **Monday, February 5, 2007**, and heard on or about **Monday, March 19, 2007 at 10 a. m.**

ARRIOLA COWAN &amp; ARRIOLA

By: ANITA P. ARRIOLA, ESQ.

Date \_\_\_\_\_

**BLAIR STERLING & JOHNSON**

By: THOMAS C. STERLING, ESQ.

Date \_\_\_\_\_

**CARLSMITH BALL LLP**

By: J. PATRICK MASON, ESQ.

Date \_\_\_\_\_

**MAHER · YANZA · FLYNN · TIMBLIN LLP**

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By: \_\_\_\_\_  
**LOUIE J. YANZA, ESQ.**

\_\_\_\_\_  
Date

**DOOLEY ROBERTS & FOWLER LLP**

By: \_\_\_\_\_  
**JOHN A. VISOSKY**

\_\_\_\_\_  
Date

**LUJAN AGUIGUI & PEREZ LLP**

By: \_\_\_\_\_  
**IGNACIO C. AGUIGUI, ESQ.**

\_\_\_\_\_  
Date